Supreme Court, U. S.
FILED
AUG 27 1974
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-1500

DON R. ERICKSON, WARDEN, *Petitioner*,

v.

ROBERT LEE FEATHER, ET AL., *Respondent*.

On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

BRIEF FOR SISSETON-WAHPETON SIOUX TRIBE AS AMICUS CURIAE IN SUPPORT OF RESPONDENT

THOMAS L. SMITHSON
JOHN E. ECHOHAWK
JOHN D. ROSS, III
1506 Broadway
Boulder, Colorado 80302
Counsel for Amicus Curiae

Of Counsel:

NATIVE AMERICAN RIGHTS FUND

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-1500

DON R. ERICKSON, WARDEN, *Petitioner,*

v.

ROBERT LEE FEATHER, ET AL., *Respondent.*

On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

---

BRIEF FOR SISSETON-WAHPETON SIOUX TRIBE AS AMICUS CURIAE IN SUPPORT OF RESPONDENT

The Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation files the following brief amicus curiae with the consent of Petitioner Don R. Erickson and Respondents Robert Lee Feather, et al. Written consents of both parties, by letter, are on file with the Clerk of this Court.

INTEREST OF AMICUS CURIAE

The Sisseton-Wahpeton Sioux Tribe files this brief amicus curiae in the interest of preservation of the existence of the Tribe. By urging affirmance of the decision of the United States Court of Appeals for the Eighth Circuit herein, the Tribe seeks to protect the territorial integrity of the Lake Traverse Reservation as established by the Treaty of February 19, 1867, 15 Stat. 505. The Tribe further seeks to assert and defend the jurisdiction of tribal and federal courts over civil and criminal causes of action to which Indians are parties arising within the original and present exterior boundaries of the Lake Traverse Reservation.

ARGUMENT

> These Indian Tribes are the wards of the Nation. They are communities dependent on the United States; dependent largely for their daily food; dependent for their political rights. They owe no allegiance to the States, and receive from them no protection. Because of the local ill feeling, the people of the States where they are found are often their deadliest enemies.

Thus spoke the United States Supreme Court in *United States* v. *Kagama*, 118 U.S. 375, 383, 384 (1886) in sustaining the power of Congress to assume jurisdiction over major crimes between Indians against the contention that state law was applicable.

The Sisseton-Wahpeton Sioux Tribe is prepared to extend the hand of inter-governmental cooperation to the State of South Dakota and its political subdivisions which overlap the Lake Traverse Reservation. The State of South Dakota and its political subdivisions

have demonstrated no reciprocal respect for the Sisseton-Wahpeton Sioux Tribe. During periods of recent history when tribal governments were weakened and demoralized by federal policies and inadequate funding, the response of South Dakota and the counties within the Lake Traverse Reservation has been to assert jurisdiction of the state over Indians within Indian country by default. The results have been discriminatory and inadequate police protection and law enforcement, challenges to the sovereign right of the Tribe to regulate hunting and fishing within its boundaries, and the genocidal practice of the taking away of Indian children by the arrogant application in state court, of alien child welfare standards and the willful disregard of tribal custom and tradition in the care of children. In short, the State and its subdivisions have chosen to be the enemy of the Sisseton-Wahpeton Sioux Tribe, and their attacks upon the Tribe's sovereignty and territorial integrity must be repulsed in this Court.

The Sisseton-Wahpeton Sioux Tribe has always possessed jurisdiction over criminal and civil actions involving Indians within the Lake Traverse Reservation, to the exclusion of the courts of South Dakota. *Worcester* v. *Georgia*, 31 U.S. (6 Pet.) 515 (1832). The Tribe has always insisted that its territory included all lands within the original exterior boundaries of the Lake Traverse Reservation. The Tribe did not consent to the "disestablishment" or "diminishment" of its reservation by the United States. Nor did the Tribe, by agreeing to the sale of certain unallotted lands to non-Indian homesteaders, agree and consent to the diminishment of tribal jurisdiction and sovereignty within the exterior boundaries of the Lake Traverse Reservation. Nor, the Tribe contends, did the Congress of the

United States, by explicit, positive, enactment reduce the size of the Lake Traverse Reservation, nor alter its boundaries, nor diminish the inherent criminal and civil jurisdiction of the Tribe within that reservation.

The Sisseton-Wahpeton Sioux Tribe now exercises the full range of civil and criminal power delegated to the Tribe and its courts by the people. With nearly $90,000 of funds provided by the Law Enforcement Assistance Administration and by the Tribe with shared revenues from the United States the Tribe maintains a police department which includes Chief, Lieutenant, Sargeant, seven patrolmen, and five police vehicles. The Tribal Court consist of a Chief Judge and an Associate Judge. The Court has the assistance of a probation and parole officer and two assistants who deal with both adult offenders and juvenile matters. The Tribe presently houses its prisoners in the Roberts County jail under a contract with that county. Completion of a courthouse and jail complex, also funded by the Law Enforcement Assistance Administration, is contemplated by the end of the year. Both police and court personnel participate in ongoing training programs.

Tribal and federal law enforcement within the exterior boundaries of the Lake Traverse Reservation will solve the problem of "checkerboard" jurisdiction which is the result of the position for which the State contends. The Court of Appeals decision avoids the practical problem of platbook police patrols and inadequate protection of the public safety.

The State has not acquired civil or criminal jurisdiction within the reservation by the action required pursuant to Public Law 280, 67 Stat. 588, as amended. *McClanahan* v. *State Tax Commission of Arizona*, 411 U.S. 164 (1973); *Kennerly* v. *Montana District Court*, 400 U.S. 423 (1971); *Williams* v. *Lee*, 358 U.S. 217 (1959); *Annis* v. *Dewey County Bank*, 335 F.Supp. 133 (D. S.D. 1971). Nor has the United States Congress terminated the government of the Sisseton-Wahpeton Sioux Tribe. *Menominee Tribe* v. *United States*, 391 U.S. 404 (1968). Congress has not vacated and restored Indian lands within the Lake Traverse Reservation to the public domain, nor has it redrawn the boundaries of that reservation. *Seymour* v. *Superintendent*, 368 U.S. 351 (1962).

This Court has ruled that when "Congress has once established a reservation, all tracts included within it remain a part of the reservation until separated therefrom by Congress." *United States* v. *Celestine*, 215 U.S. 278, 285 (1909). The Court has also been vigilant to protect powers of tribal self-government, stating that "[t]he policy of leaving Indians free from state jurisdiction and control is deeply rooted in the nation's history." *Rice* v. *Olson*, 324 U.S. 786, 789 (1945); *McClanahan* v. *State Tax Commission of Arizona*, 411 U.S. 164, 168 (1973).

This Court has labored on two occasions to lay down the principles by which state courts and lower federal courts might decide cases in which it is asserted that Indian reservations have been diminished. *Seymour* v. *Superintendent*, 368 U.S. 351 (1962); *Mattz* v. *Arnett*, 412 U.S. 481 (1973). The United States Court of Appeals for the Eighth Circuit has applied the teachings of these cases obediently and accurately to those cases which have come before it. *Beardslee* v. *United States*, 387 F.2d 280 (8th Cir. 1967); *City of New Town, N.D.* v. *United States*, 454 F.2d 121 (8th Cir. 1972); *United States ex rel. Condon* v. *Erickson*, 478 F.2d 684 (8th

Cir. 1973), cited with approval, *Mattz* v. *Arnett*, 412 U.S. 481, 497 n. 19 (1973); *United States ex rel. Feather* v. *Erickson*, 489 F.2d 99 (8th Cir. 1973). The State of South Dakota refuses to accept these authoritative pronouncements. The principles set forth in those cases are clear. Their application to the case at bar is imperative. Their application to this case is essential to the preservation of the Sisseton-Wahpeton Sioux Tribe.

CONCLUSION

The Sisseton-Wahpeton Sioux Tribe commends to the Court's attention the Brief for the Petitioner in the companion case of *Decoteau* v. *District County Court for the Tenth Judicial District*, Docket No. 73-1148. The principles and argument set forth therein justify summary disposition of these cases. Accordingly, the Tribe respectfully urges that this Court summarily affirm the judgment of the United States Court of Appeals for the Eighth Circuit in No. 73-1500 and summarily reverse the judgment of the Supreme Court of South Dakota in No. 73-1148.

Respectfully submitted,

THOMAS L. SMITHSON
JOHN E. ECHOHAWK
JOHN D. ROSS, III
1506 Broadway
Boulder, Colorado 80302
Counsel for Amicus Curiae

Of Counsel:

NATIVE AMERICAN RIGHTS FUND

August 26, 1974.